Pittsburgh Logistics Systems, Inc. d/b/a PLS Logistics Services *and* John Cervantes. Case 12–CA–189005

March 16, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND EMANUEL

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. John Cervantes filed a charge on November 30, 2016, against Pittsburgh Logistics Systems, Inc. d/b/a PLS Logistics Services (the Respondent), alleging that the Respondent violated Section 8(a)(1) of the Act.

Subsequently, prior to the issuance of a complaint, the Respondent entered into an informal settlement agreement which was approved by the then-Acting Regional Director on April 21, 2017.[1] The settlement agreement required, among other things, that the Respondent post at its facilities throughout the United States a Board Notice to Employees, and that it rescind its work rule that prohibited employees from disparaging or impugning the Respondent.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of noncompliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

On May 17, 2017, the Region sent a compliance package to the Respondent's counsel containing copies of the conformed settlement agreement, the Notice to Employees, Certification of Compliance forms, and a letter describing the Respondent's obligations under the settlement agreement. In June, July, and August 2017, the Region solicited the Respondent, through multiple emails to its counsel, to comply with its obligations under the settlement agreement and provided instructions and deadlines for the Respondent in this regard. In August, the Region was informed that the Respondent had selected new counsel. On October 16, 2017, after receiving a Notice of Appearance, the Region sent a compliance package to the Respondent's new counsel containing copies of the conformed settlement agreement, the Notice to Employees, Certification of Compliance forms, and a letter describing the Respondent's obligations under the settlement agreement. The Region received no response from the Respondent. On November 13, 2017, the Regional Director sent the Respondent's counsel a default warning letter, advising the Respondent that if its noncompliance was not cured by November 27, 2017, the Region would invoke the default provision in the settlement agreement, issue a complaint, and file a motion for default judgment with the Board. The Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provision of the settlement agreement, on December 11, 2017, the Regional Director issued the complaint. On December 12, 2017, the General Counsel filed a Motion for Default Judgment with the Board. On December 14, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no

[1] The Charging Party did not enter into the settlement agreement, but did not appeal the Acting Regional Director's approval of it.

response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with any of the terms of the settlement agreement. Consequently, pursuant to the noncompliance provision of the settlement agreement set forth above, we find that all of the allegations in the complaint are true.[2] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation, with offices and places of business located in the State of Florida and certain other states, including an office and place of business in Jacksonville, Florida, has been engaged in providing logistics management services, including brokering the interstate and intrastate transportation of freight.

In conducting its operations, during the 12-month period preceding issuance of the complaint, the Respondent performed services valued in excess of $50,000 in states other than the State of Florida.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Gary Bailey	-	Branch Manager
Amanda Gordish	-	Branch Manager

Since on or before January 2014, and all times thereafter, the Respondent has maintained the following "Non-Disparagement clause" provision in its Employment Terms and Conditions agreement and has required all of its employees at all of its locations to execute that agreement:

> 10. Non-Disparagement. I agree that I will never disparage the Company or its services, products or other applications of the Company, or otherwise impugn the Company or the business of the Company.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.[3]

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to comply with the unmet terms of the settlement agreement approved by the then-Acting Regional Director for Region 12 on April 21, 2017, by: ceasing and desisting from maintaining a work rule that prohibits employees from disparaging or impugning the company; rescinding the Non-Disparagement provision found in paragraph 10 of the Employment Terms and Conditions; notifying employees in writing that the provision has been rescinded; and posting at its facilities the notices provided by the Board in the manner prescribed in the settlement agreement.

In limiting our affirmative remedies to those enumerated above, we are mindful that the General Counsel is empowered under the default provision of the settlement agreement to seek "a full remedy for the violations found as is appropriate to remedy such violations." However, in his Motion for Default Judgment, the General Counsel has not sought such additional remedies, and we will not, sua sponte, include them.[4]

[2] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

[3] The Board finds the violation here based on the Respondent's breach of the prior settlement agreement. Pursuant to the noncompliance provision of the settlement agreement, the Respondent has waived its right to file an answer to the complaint, which means the allegations in the complaint are therefore admitted as true. Accordingly, Member Emanuel expresses no view as to whether he would have found the non-disparagement rule unlawful if the Respondent had put its lawfulness at issue.

[4] In his motion for default judgment, the General Counsel stated that the Respondent has failed to demonstrate compliance with any terms of the settlement agreement and specifically requested that the Board order the Respondent to "cease and desist from its unfair labor practices as set forth in the Notice to Employees attached to the Settlement Agreement." In the particular circumstances of this case, we construe the General Counsel's motion as a request to enforce the unmet terms of the settlement agreement. See, e.g., *Perkins Management Services*, 365 NLRB No. 90, slip op. at 4 fn. 3 (2017).

ORDER

The National Labor Relations Board orders that the Respondent, Pittsburgh Logistics Systems, Inc. d/b/a PLS Logistics Services, Jacksonville, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a work rule that prohibits employees from disparaging or impugning the Respondent.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the portion of the Non-Disparagement provision found at Paragraph 10 of the Employment Terms and Conditions that prohibits employees from disparaging or impugning the Respondent and notify employees in writing that it has been done.

(b) Within 14 days after service by the Region, post at its facilities listed in the settlement agreement, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 16, 2018

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

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William J. Emanuel, Member

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT maintain a work rule that prohibits you from disparaging or impugning our Company.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind the portion of our Non-Disparagement provision found at Paragraph 10 of our Employment Terms and Conditions that prohibits you from disparaging or impugning the Company and WE WILL notify you in writing that this has been done.

PITTSBURGH LOGISTICS SYSTEMS, INC. D/B/A PLS LOGISTICS SERVICES

The Board's decision can be found at www.nlrb.gov/case/12-CA-189005 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.